

§ 23.91

Small business concern means a firm, including all its domestic and foreign affiliates, that qualifies under the applicable size standard set forth in appendix A to this subpart. In making a size determination, all affiliates, regardless of whether organized for profit, must be included. A firm qualifying under this definition that exceeds the size standard after entering a concession agreement, but that otherwise remains eligible, may continue to be counted as DBE participation until the current agreement, including the exercise of options, expires.

(a) The Secretary may periodically adjust the size standards in appendix A to this subpart for inflation.

(b) A firm that was certified as a minority/woman/or disadvantaged business enterprise (MBE/WBE/DBE) prior to the effective date of this subpart, pursuant to a requirement in § 23.43(d) in effect prior to March 4, 1999 (See 49 CFR Parts 1 to 99 revised as of October 1, 1998.) or FAA guidance implementing section 511(a)(17) of the Airport and Airway Improvement Act of 1982, as amended, that has exceeded the size standard, may be counted as DBE participation until the current agreement, including the exercise of options, expires, provided that the firm remains otherwise eligible.

Socially and economically disadvantaged individuals shall have the same meaning as set forth in 49 CFR part 26.

Sponsor means the recipient of an FAA grant.

[Amdt. 1, 57 FR 18410, Apr. 30, 1992, as amended at 64 FR 5126, Feb. 2, 1999]

§ 23.91 Applicability.

This subpart applies to any sponsor that has received a grant for airport development authorized by the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987.

§ 23.93 Requirements for airport sponsors.

(a) *General requirements.* (1) Each sponsor shall abide by the non-discrimination requirements of § 26.7 with respect to the award and performance of any concession agreement covered by this subpart.

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(2) Each sponsor shall take all necessary and reasonable steps to foster participation by DBE's in its airport concession activities.

(3) The following statements shall be included in all concession agreements executed between the sponsor and any firm after the effective date of this subpart.

(i) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23, subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR part 23, subpart F.

(ii) "The concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements."

(b) *Additional requirements for primary airports* (1) Sponsors of primary airports shall implement a disadvantaged business enterprise (DBE) concession plan containing the elements listed in § 23.95. Sponsors of more than one primary airport shall implement a separate plan for each location that has received assistance for airport development. The plan shall be submitted to the appropriate FAA Regional Office for approval.

(2) The sponsor shall review and update the plan at least annually. The updated plan shall include any information required under § 23.95 that was not available to the sponsor when the previous submission was made. Updated plans shall be submitted to the appropriate FAA Regional Office for approval.

(c) *Additional requirements for nonprimary airports.* Sponsors of commercial service airports (except primary), general aviation and reliever airports are not required to implement a DBE concession plan but shall take appropriate outreach steps to encourage available DBE's to participate as concessionaires whenever there is a concession opportunity.

[Amdt. 1, 57 FR 18410, Apr. 30, 1992, as amended at 64 FR 5126, Feb. 2, 1999]